United States Court of Appeals

for the Second Circuit

APPENDIX

76-1228

To be argued by
DAVID J. GOTTLIEB

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-v.-

JULIO MARCELINO a/k/a/ LUCKY,

Defendant-Appellant.

Docket No. 76-1228

BP/S

APPENDIX FOR APPELLANT PURSUANT
TO ANDERS V. CALIFORNIA

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.
THE LEGAL AID SOCIETY
Attorney for Appellant
JULIO MARCELINO a/k/a/ LUCKY
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

New York, New York
August 13, 1976

DAVID J. GOTTLIEB

Of Counsel

PAGINATION AS IN ORIGINAL COPY

NITED STATES DISTRICT COURT — CRIMINAL DOCKET

Felony ☐ Minor Offense ☐ Other Misdemeanor ☐

JUDGE/MAGISTRATE: 0208 District | 1 Office | Assigned Trial: 0845 Disp./Sentance

• U.S. vs. MARCELINO, JULIO, a/k/a "Lucky" defendant

Case Filed: Day 04 | Mo. 12 | Yr. 75 | Docket No. 117 | No. of Defdnts 24

I. CHARGES

U.S. CODE SECTION	OFFENSES	COUNTS
21:846	Consp. to viol. Fed. Narco. Laws.	1

MAGR CASE

BAIL TYPE: ☐ Denied ☐ Pers ☐ Unse ☐ Condition

AMT Set (000) $ 25

date ☐ Bail Not Made ☐ Bail Status Changed (See Docket)

ATTORNEYS

U.S. Attorney or Asst.: Alan R. Kaufman (212) 791-0069

Defense: ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ Home ☐ Other ☐ PD ☐ CD

II. KEY INTERVALS & DATES

ARREST → INDICTMENT ☐ Information ☐ → ARRAIGNMENT → TRIAL → Disposition → SE

- ARREST: _____ or U.S. Custody Began on Above Charges; ☐ Prosecution Deferred
- ☐ High Risk Defn. & Date Design'd
- INDICTMENT: Waived ☐; Superseding ☒ndict/Info ☐ 12-4-75
- ARRAIGNMENT: 1st Plea; Final Plea
- Trial Set For; ☐ Not Guilty ☐ Nolo ☐ Guilty; ☐ Not Guilty ☐ Nolo ☐ Guilty
- TRIAL: Voir Dire ☐; Trial Began ☐ J ☐ N J; Trial Ended
- Disposition: ☐ Convicted ☐ C ☐ C; ☐ Acquitted ☐ 2; ☐ Dismissed: ☐; ☐ Nolled/Discont

III. MAGISTRATE

		*DATE	INITIAL/No.
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Arrest Warrant			
COMPLAINT ▷			
OFFENSE (In Complaint)			

INITIAL APPEARANCE — INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING — Date Scheduled ____ Date Held ____

☐ Waived ☐ Not Waived ☐ Intervening Indictment

Tape No. — INITIAL/No.

OUTCOME

☐ Dismissed ☐ Held for District GJ BOND ☐ E ☐ T D

☐ Held to Answer to U. S. District

AT:

Magistrate's Initials ▷

IV. DISTRICT COURT DOCKET ENTRIES

* Show last n

Valenzuela-Verdugo-1;Ramos-Iribe-2;Ramos-Serrano-3; Castelum-Guerrero-4;Morales-Benavides-5;Portillo-Flores-6; Acosta-Lascano-7;Laija-8;Gallardo-9;Lopez-10;Rivera-11; Cruz-12;Rossy-13;Valles-M.-14;Valles,T.-15;John Doe(Goldito) 16;John Doe(Mona)-17;Valentine-18;Garcia-19;Marcelino-20; Bonilla-21;Code-22;John Doe(Rmaoncito)-23; John Doe(Georgie)24.

DATE	
12-4-75	Filed indictment and ordered sealed. Case referred to Judge Frankel as relating to and superseding indictments 75 Cr 1096 and 75 Cr 1161. Metzner,J.
12-5-75	Indictment ordered unsealed. Metzner,J.
01-16-76	Filed Docket Entry Sheet rec'd from Magistrate Jacobs.
02-20-76	Filed Deft's CJA-23 Financial Affdvt & Order Appointing Counsel rec'd from Magistrate Jacobs. + Disposition Sheet.
02-20-76	Filed order directing payments to Gustavo Hoffman, Interpreter.
02-24-76	Filed order that Julie Sayres, 240 West End Ave, NYC & Dena J. Kohn, 1 University Place, NYC, be retained by the Court and assigned to assis Deft and his counsel in the trial & preparations of the captioned proceedings, and further ordered that the interpreters shall be paid the usual and customary fees....FRANKEL,J.
03-02-76	Filed Order directing payments to Anita Zevallos, Interpreter.
03-02-76	Filed Order directing payments to Jacqueline Monyagu, Interpreter.
02-27-76	Deft, Atty Roland Thau - Jury Trial commenced.
03-01-76 To 03-05-76	Trial Continued.

Excludable (b)

V. MAGISTRATE & DISTRICT COURT DOCKET ENTRIES

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
03-08-76 To 03-12-76	=Trial Continued.				
03-15-76 To 03-20-76	=Trial Continued. Jury resumes deliberations. Jury returns a Verdict of GUILTY as to Deft. P.S.I. ordered. Sentence set for April 27, 1976. REMANDED....FRANKEL,J.				
4-6-76	Filed transcript of record of proceedings, dated 3-1-2-3-4-76				
4-27-76	Filed Judgment & Commitment Order= The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of SEVEN AND ONE-HALF (7-½) YEARS. Pursuant to Section 841 of Title 21, U.S. Code, Deft is placed on special parole for a period of three (3) YEARS in addition to said term of imprisonment.....FRANKEL,J.				
4-27-76	Filed Deft;s Notice of Appeal to the U.S.C.A. for the 2nd Circuit from the Judgment entered in this action on 4-27-76. Leave to proceed in Forma Pauperis granted...Frankel,J.				
4-6-76	Filed transcript of record of proceedings, dated MAR 1-2-3-4-76				
4-6-76	Filed transcript of record of proceedings, dated MAR 5-8-9-10-11-76				
4-6-76	Filed transcript of record of proceedings, dated MAR 12-15-16-17-18-19-22-76				

	(a)	(b)	(c)	(d)
	Interval	Start Date / End Date	Ltr. Code	Total Days

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 CRIM. 1177

UNITED STATES OF AMERICA :

-v- : INDICTMENT

FERNANDO VALENZUELA-VERDUGO, : S 75 Cr.
HECTOR RAMOS-IRIBE,
HUMBERTO RAMOS-SERRANO, a/k/a :
Colorao, a/k/a Red
WILFREDO GASTELUM-GUERRERO, :
ADON MORALES-BENAVIDES,
DAMASO PORTILLO-FLORES, :
MANUEL ACOSTA-LASCANO,
ROSALBA LAIJA, :
FERNANDO GALLARDO,
JOSE PEREZ LOPEZ, :
JOSE RIVERA, a/k/a Rico,
BENITO CRUZ, :
RAYMOND ROSSY, a/k/a Lopez,
MIGUEL VALLES, :
TOMAS VALLES,
JOHN DOE VALLES, a/k/a Goldito, (True name: Enrique Valles) 12-16-75
JOHN DOE VALLES, a/k/a Mona,
RAYMOND VALENTINE, :
LUIS GARCIA,
JULIO MARCELINO, a/k/a Lucky, :
TONY BONILLA, a/k/a Tony Corvette,
MILTON CODE, :
JOHN DOE, a/k/a Ramoncito, and
JOHN DOE, a/k/a Georgie, :

Defendants. :

The Grand Jury charges:

1. From on or about the 1st day of January, 1975 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, FERNANDO VALENZUELA-VERDUGO, HECTOR RAMOS-IRIBE, HUMBERTO RAMOS-SERRANO, a/k/a Colorao, a/k/a Red, WILFREDO GASTELUM-GUERRERO, ADON MORALES-BENAVIDES, DAMASO PORTILLO-FLORES, MANUEL ACOSTA-LASCANO, ROSALBA LAIJA, FERNANDO GALLARDO, JOSE PEREZ LOPEZ, JOSE RIVERA, a/k/a Rico, BENITO CRUZ, RAYMOND ROSSY, a/k/a Lopez, MIGUEL VALLES, TOMAS VALLES, JOHN DOE VALLES, a/k/a Goldito, JOHN DOE VALLES, a/k/a Mona, RAYMOND VALENTINE, LUIS GARCIA, JULIO MARCELINO, a/k/a Lucky, TONY BONILLA, a/k/a Tony Corvette, MILTON CODE, JOHN DOE, a/k/a Ramoncito, and JOHN DOE, a/k/a Georgie, the defendants, and Herman Rosa and John Doe, a/k/a Victor, named herein as co-conspirators but not as defendants, and

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others to the Grand Jury unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants and co-conspirators unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I narcotic drug controlled substances, the exact amounts thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about May, 1975, the defendants JOSE RIVERA, a/k/a Rico, JOSE PEREZ LOPEZ, and BENITO CRUZ, went to Los Angeles, California, and there purchased 1/4 kilogram of

heroin from the defendant HECTOR RAMOS-IRIBE for $6,000, which herein JOSE PEREZ LOPEZ brought to New York City.

2. In or about May, 1975, the defendants JOSE PEREZ LOPEZ and RAYMOND ROSSY, a/k/a Lopez, met the defendant HECTOR RAMOS-IRIBE in Los Angeles, California, and HECTOR RAMOS-IRIBE gave JOSE PEREZ LOPEZ two kilograms of heroin for $48,000, which JOSE PEREZ LOPEZ brought to New York City.

3. In or about May or June, 1975, the defendants JOSE PEREZ LOPEZ and RAYMOND ROSSY, a/k/a Lopez, met the defendant HECTOR RAMOS-IRIBE in Los Angeles, California, and HECTOR RAMOS-IRIBE gave RAYMOND ROSSY one kilogram of heroin for $24,000, which heroin ROSSY brought to New York City.

4. In or about June or July, 1975, the defendant RAYMOND ROSSY, a/k/a Lopez, met the defendant HECTOR RAMOS-IRIBE in Los Angeles, California, and HECTOR RAMOS-IRIBE gave RAYMOND ROSSY two kilograms of heroin for $48,000, which heroin ROSSY brought to New York City.

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5. In or about June or July, 1975, the defendant RAYMOND ROSSY, a/k/a Lopez, met the defendant HECTOR RAMOS-IRIBE in Los Angeles, California, and HECTOR RAMOS-IRIBE gave RAYMOND ROSSY four kilograms of heroin for $96,000, which heroin ROSSY brought to New York City.

6. In or about July, 1975, the defendant RAYMOND ROSSY, a/k/a Lopez, met the defendant HECTOR RAMOS-IRIBE in Los Angeles, California, and HECTOR RAMOS-IRIBE gave RAYMOND ROSSY six kilograms of heroin for $144,000, which heroin ROSSY brought to New York City.

7. In or about July, 1975, the defendant RAYMOND ROSSY, a/k/a Lopez, met the defendant HECTOR RAMOS-IRIBE in Los Angeles, California, and HECTOR RAMOS-IRIBE gave RAYMOND ROSSY eight kilograms of heroin for $192,000, which heroin ROSSY brought to New York City.

8. In or about July, 1975, the defendant RAYMOND ROSSY, in the Southern District of New York, sold 1/4 kilogram of heroin to a New York City policeman acting in an undercover capacity.

9. In or about July, 1975, the defendant RAYMOND ROSSY, a/k/a Lopez, met the defendant HECTOR RAMOS-IRIBE in Los Angeles, California, and RAYMOND ROSSY returned 7 3/4 kilograms of heroin to HECTOR RAMOS-IRIBE, who in turn then gave 8 1/2 kilograms of heroin to ROSSY, which heroin ROSSY brought to New York City.

10. In or about August, 1975, the defendant RAYMOND ROSSY, a/k/a Lopez, met the defendant HECTOR RAMOS-IRIBE in Los Angeles, California, and HECTOR RAMOS-IRIBE gave RAYMOND ROSSY eight kilograms of heroin for $192,000, which heroin ROSSY brought to New York City.

11. In or about August or September, 1975, the defendant RAYMOND ROSSY and co-conspirator John Doe, a/k/a Victor, went to Los Angeles, California, with $240,000.

12. In or about August or September, 1975, the defendant RAYMOND ROSSY, a/k/a Lopez, met the defendants HECTOR RAMOS-IRIBE and HUMBERTO RAMOS-SERRANO, a/k/a Colorao,

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a/k/a Red in Los Angeles, California, and RAYMOND ROSSY gave $240,000 to HECTOR RAMOS-IRIBE and HUMBERTO RAMOS-SERRANO, a/k/a Colorao, a/k/a Red.

13. In or about August or September, 1975, in Los Angeles, California, the defendant HUMBERTO RAMOS-SERRANO, a/k/a Colorao, a/k/a Red, gave 10 kilograms of heroin to the defendant RAYMOND ROSSY, a/k/a Lopez, which heroin ROSSY brought to New York City.

14. In or about September, 1975, the defendant RAYMOND ROSSY, a/k/a Lopez, met the defendant HUMBERTO RAMOS-SERRANO, a/k/a Colorao, a/k/a Red, in Los Angeles, California, and HUMBERTO RAMOS-SERRANO gave RAYMOND ROSSY seven kilograms of heroin for $168,000, which heroin ROSSY brought to New York City.

15. In or about October, 1975, the defendants RAYMOND ROSSY and MIGUEL VALLES went to Los Angeles, California, with $240,000.

16. In or about October, 1975, the defendant RAYMOND ROSSY, a/k/a Lopez, met the defendant HUMBERTO RAMOS-SERRANO, a/k/a Colorao, a/k/a Red, in Los Angeles, California, and HUMBERTO RAMOS-SERRANO gave 10 kilograms of heroin to RAYMOND ROSSY for $240,000, which heroin ROSSY brought to New York City.

17. In or about October, 1975, the defendants JOHN DOE VALLES, a/k/a Goldito, and JOHN DOE VALLES, a/k/a Mona, went to Los Angeles, California with $240,000, and thereafter returned to New York City with 10 kilograms of heroin.

18. From in or about July, 1975 through in or about October, 1975, the defendant RAYMOND ROSSY stashed much of his heroin in the apartment of the defendant TOMAS VALLES in Queens, New York, for which TOMAS VALLES received $1000 per kilogram.

19. From in or about July, 1975, through in or about October, 1975, the defendant MIGUEL VALLES purchased on a weekly or bi-weekly basis various quantities of heroin, ranging from 1/4 kilogram to three kilograms, from the defendant RAYMOND ROSSY.

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20. From in or about July, 1975 through in or about October, 1975, the defendant RAYMOND VALENTINE purchased on a weekly basis various quantities of heroin, ranging from 1/4 kilogram to three kilograms, from the defendant RAYMOND ROSSY.

21. From in or about July, 1975 through in or about October, 1975, the defendant LUIS GARCIA purchased on a weekly basis various quantities of heroin, ranging from 1/4 kilogram to three kilograms, from the defendant RAYMOND ROSSY.

22. From in or about July, 1975 through in or about October, 1975, the defendant JULIO MARCELINO, a/k/a Lucky, purchased on a weekly basis various quantities of heroin, ranging from 1/4 kilogram to three kilograms, from the defendant RAYMOND ROSSY.

23. From in or about July, 1975 through in or about October, 1975, the defendant TONY BONILLA, a/k/a Tony Corvette, purchased on a twice-a-week basis 1/4 kilogram of heroin from the defendant RAYMOND ROSSY.

24. From in or about June, 1975 through in or about August, 1975, the defendant MILTON CODE purchased on a tri-weekly basis 1/4 kilogram of heroin from the defendant RAYMOND ROSSY.

25. From in or about July, 1975 through in or about October, 1975, the defendant JOHN DOE, a/k/a Ramoncito, purchased on a weekly basis various quantities of heroin, ranging from 1/4 kilogram to three kilograms, from the defendant RAYMOND ROSSY.

26. From in or about August, 1975 through in or about October, 1975, the defendant JOHN DOE, a/k/a Georgie, purchased three kilograms of heroin from each shipment that the defendant RAYMOND ROSSY brought back to New York City from Los Angeles.

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27. On or about September 12, 1975, the defendants FERNANDO GALLARDO and BENITO CRUZ discussed the sale of approximately 1/2 kilogram of heroin to another individual.

28. On or about October 13, 1975, the defendants FERNANDO GALLARDO and BENITO CRUZ discussed the sale of approximately 5 kilograms of heroin to another individual.

29. On November 6, 1975, at approximately 11:40 A.M., in Los Angeles, California, the defendant RAYMOND ROSSY had a telephone conversation with the defendant ROSALBA LAIJA, during which conversation ROSSY ordered 20 kilograms of heroin, and LAIJA stated that her brother-in-law would meet ROSSY.

30. On November 6, 1975, at approximately 12:20 p.m., in Los Angeles, California, the defendant HUMBERTO RAMOS-SERRANO, a/k/a Colorao, a/k/a Red, met the defendant RAYMOND ROSSY at the Dunes Motel, and ROSSY ordered 20 kilograms of heroin from HUMBERTO RAMOS-SERRANO, who stated that it would take about one hour to get the heroin.

31. On November 6, 1975, in Los Angeles, California, the defendant HUMBERTO RAMOS-SERRANO, a/k/a Colorao, a/k/a Red, left the Dunes Motel and drove to a house at 1020 West College Street, Los Angeles, California, and at 12:50 p.m., he left that house.

32. On November 6, 1975, in Los Angeles, California, at approximately 1:00 p.m., the defendants ADON MORALES-BENAVIDES and WILFREDO GASTELUM-GUERRERO arrived at 1020 West College Street, and WILFREDO GASTELUM-GUERRERO carried a large package into the house.

33. On November 6, 1975, in Los Angeles, California, at approximately 1:30 p.m., the defendants ADON MORALES-BENAVIDES, WILFREDO GASTELUM-GUERRERO, DAMASO PORTILLO-FLORES, and MANUEL ACOSTA-LASCANO met in the vicinity of the C&H Body Shop, 1100 West Bellevue Avenue.

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34. On November 6, 1975, in Los Angeles, California, at approximately 2:10 p.m., the defendants MANUEL ACOSTA-LASCANO and DAMASO PORTILLO-FLORES drove to 1020 West College Street, where they carried a large brown suitcase from the car to the house, at which time the defendant HUMBERTO RAMOS-SERRANO, a/k/a Colorao, a/k/a Red also entered the house.

35. On November 6, 1975, in Los Angeles, California, at approximately 2:13 p.m., the defendant HUMBERTO RAMOS-SERRANO, a/k/a Colorao, a/k/a Red, exited 1020 West College Street carrying a large brown suitcase which he put into the trunk of a car, and RAMOS-SERRANO then drove to the Dunes Motel.

36. On November 6, 1975, in Los Angeles, California, at approximately 2:35 p.m., the defendant HUMBERTO RAMOS-SERRANO, a/k/a Colorao, a/k/a Red, entered Room 110 at the Dunes Motel carrying a large brown suitcase which contained approximately 20 kilograms of heroin.

37. On November 6, 1975, in Los Angeles, California, the defendant HECTOR RAMOS-IRIBE had a telephone conversation.

(Title 21, United States Code, Section 846).

COUNT TWO

The Grand Jury further charges:

From on or about the 1st day of January, 1975, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, FERNANDO GALLARDO, the defendant, unlawfully, wilfully, intentionally and knowingly did engage in a continuing criminal enterprise in that he unlawfully, wilfully, intentionally and knowingly did violate Title 21, United States Code, Sections 841(a)(1)

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and 841(b)(1)(A) as alleged in Counts Three and Four of this indictment, which are incorporated by reference herein, and did commit other violations of said statutes, which violations were part of a continuing series of violations of said statutes undertaken by the defendant in concert with at least five other persons with respect to whom the defendant FERNANDO GALLARDO occupied a position of organizer, supervisor and manager and from which continuing series of violations the defendant FERNANDO GALLARDO obtained substantial income and resources.

(Title 21, United States Code, Section 848)

COUNT THREE

The Grand Jury further charges:

On or about the 12th day of September, 1975 in the Southern District of New York, FERNANDO GALLARDO, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 1/2 kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), Title 18, United States Code, Section 2).

COUNT FOUR

The Grand Jury further charges:

On or about the 15th day of October, 1975 in the Southern District of New York, FERNANDO GALLARDO the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 5 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2).

FOREMAN

THOMAS J. CAHILL
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

JUDGE FRANKEL

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

FERNANDO VALENZUELA-VERDUGO, et al.,

Defendants.

INDICTMENT

Title 21, United States Code, Sections 812, 841(a)(1), 841(b)(1)(A), 846 and 848.

THOMAS J. CAHILL
United States Attorney.

A TRUE BILL

Foreman.

FPI—SS—2-19-71—20M—6950

December 4, 1975 - Indictment filed
Bench Warrants ordered as to:
Defts: Fernando Valenzuela-Verdugo;
Jose Perez Lopez;
Jose Rivera, a/k/a Rico
Benito Cruz;
John Doe Valles, a/k/a Bolillo,
John Doe Lalas, a/k/a Mona,
Tony Bonilla, a/k/a Tony Corvette;
and Milton Cole.
Indictment sealed. Case
referred to Frankel as relating to
and superseding indictments
75 CRIM 1096 and 75 Crim. 1161 (MEF).

Motion J

OVER

DEC 16 1975 PTC held. Trial set for Feb 24, 1976

Dft LAIJA, Bail reduction application - denied
" ERIBE, Bail reduction application - denied
cj " VERDUGO, Bail reduction application granted. Bail set at $250,000. Remanded.

JOHN DOE VALLES
AKA GALDINO T/N " ENRIQUE VALLES, Bail reduction application granted. Bail set at $15,000. Remanded.

[illegible] writ, Frankel J. WM

DEC 1 1975 Dft GALLARDO, atty pres. bail reduction application granted. Bail set at $50,000 cash or surety. ~~[illegible]~~ Writ satisfied
Frankel J. WM

12/30/75 — Dft. Fernando Gallardo — {NO appearance by deft. or counsel
cl Ordered MARKED OFF the calendar
Frankel J. W

KAUFMAN, AUSA

JAN 13 1976 Dft VERDUGO, atty pres. bail set at $1,000,000 P.R.B. secured by $150,000 cash. Bond to be co-signed by dfts brother, JOSE. Dft is to surrender his passport and is to report on a regular basis to the US Marshal in the Central Dist. of Calif.
cj Remanded.
Frankel J. WM

BEST COPY AVAILABLE

JAN. 14, 1976 - JOHN DOE, a/k/a Ramoncito TRUE NAME: JOSE DeJesus CORTES (Atty. Lawrence Cohen and Interpreter Sylvia Aguilar present) Deft. Pleads GUILTY to count 1 only. P.S.I. Ordered, for sentence 1-16-76 at 9:30 AM. Deft. continued on present bail until date of sentence.

GAGLIARDI, J.

JAN. 14, 1976 JOHN DOE, a/k/a Ramoncito TRUE NAME: JOSE DeJesus CORTES (Atty Lawrence Cohen and Interpreter Sylvia Aguilar present). Deft. sentenced to 7 years. Pur to provisions of T. 18, U.S. Code, Sec. 841 the deft is placed on Special Parole for a period 3 years to be served upon completion of confinement. The above sentence is to run concurrently with sentence imposed this date in Cr. [illegible]. Pur to Section 4205(a)(2) of T. 18, U.S. Code, deft shall become eligible for parole at such time as the board of parole may determine.

JAN 14, 1976 HECTOR RAMOS-IRIBE (Atty Joseph VOLNEY) pre. bail reduction application granted. Bail reset at $25,000 PRB secured by $2,500 cash Bond to be posigned by Pedro & Ofelia Villanueva, Maria & Celina Rosario and Rosalia Raya. Bail limits extended to Central Dist. of California, Passport to be surrendered. Dft to report daily to his counsel or to other arrangements which may be made. Remanded

Gagliardi J

JUDGE FRANKEL

JAN 30, 1976 - Government's application for revocation and forfeiture of deft GALLARDO bail granted.
B/W ordered.

Frankel J.

WM

Feb 17, 1976 - Government's application for revocation and forfeiture of bail and ordering B/W for below defts. granted:

FERNANDO VALENZUELA-VERDUGO
HECTOR RAMOS-TRIBE
ROSALBA LAIJA.

KAUFMAN, AUSA

Frankel J.

WM

FEB 27 1976

DEFS. MIGUEL VALLES, atty LARRY HOCHHEISER
ENRIQUE VALLES, atty JOHN FINN
TOMAS VALLES, atty ALLEN HIRSHMAN
LUIS GARCIA, atty ROBERT BLOSSNER
JULIO MARCELINO atty ROLAND THAU
JOSE PEREZ LOPEZ atty DAVID BLACKSTONE

Jury trial on above defendants Commenced.

WM

MAR 1 1976 Trial Continued

MAR 2 1976 Trial Continued

MAR 3 1976 Trial Continued

MAR 4 1976 Trial continued

MAR 5 1976 Trial continued

/ Dft VALENTINE, atty ABRAHAM SOLOMON, pres enters a plea of Guilty to Count 1. P.S.I. ordered sentence set for April 20, 1976, at 9:45. Dft Continued on protective custody.

MAR 8 1976 Trial continued

MAR 9 1976 Trial continued.

MAR 10 1976 Trial continued.

MAR 11 1976 Trial continued.

MAR 12 1976 Trial continued.

Trial Continued

MAR 16 1976 Trial Continued

MAR 17 1976 Trial Continued

MAR 18 1976 Trial Continued. Jury returns a verdict of Guilty on Ct 1 as to dfts LOPEZ, TOMAS VALLES and ENRIQUE VALLES. PSI ordered. Sent. for T. & E. VALLES set for Apr 19. Sent date for LOPEZ - Apr 20, all dfts remanded.

MAR 19 1976 Trial Continued. Jury returned verdict of Guilty on Ct 1 as to dft MIGUEL VALLES. PSI ordered. Sent set for Apr 21 1976. Remanded.

-OVER-

MAR 20 1976 Trial cont'd. Jury resumes deliberations. Jury returns a verdict of Guilty as to the dft JULIO MARCELINO. PSI Ordered. Sentence set for April 27, 1976. Remanded. Jury unable to reach a verdict as to dft CARLIN. Mistrial declared.

Frankel J. WM

APR 14 1976 Dft PORTILLO-FLORES, atty pres. upon Government's application bail is reduced to R.O.R.

Frankel J. WM

APR 16, 1976 dft JOSE RIVERA, atty STANLEY RIVERA, pres
waives the 90 day trial date

Frankel J. WM

4-19-76 — dft Enrique VALLES, motion for dismissal of indictment denied in open court and on the record. WM

APR 19 dft Enrique VALLES, atty JOHN FINN, pres
sentenced as a Young Adult Offender under Sec
5010 (b), T18. as extended by Sec 4209 until
released under Sec 5017(c), T18. Remanded
~~Defendant VALLES motion denied in open court and on the record.~~
Sentence as to dft TOMAS VALLES ~~and~~ adjourned
until 9:45 AM May 4, 1976.

Frankel J. WM

APR 20 1976 dft LOPEZ, atty, David BLACKSTONE, pres.
sent to 3 yrs., followed by Special Parole
of 3 yrs after release from confinement. WM

Frankel J.

APR 22 1976 dft VALENTINE, atty pres. sentenced
to five (5) yrs. 3 yrs Spec Parole to
follow upon release. dft to be held in
Protective Custody for 2 wks after
which time he will be surrendered
to the U.S. Marshal.

Frankel WM

APR 27 1976 Dft MIGUEL VALDES, atty pres, Sent to Seven (7) yrs Three (3) yrs Spec Parole to follow.

WM

Dft MARCELINO, atty pres sent. to Seven & One-Half (7½) yrs. Three (3) yrs. Spec Parole to follow.

Frankel J. WM

Apr 29, 1976 Dft LUIS GARCIA, atty pres. Retrial delayed until further notice. Dft waives 60 day trial.

WM

BUCHANAN, ANSA

MAY 6 1976 Dft TOMAS VALDES, atty pres sent to Six (6) yrs. Three (3) yrs Spec Parole to follow.

Frankel J.

WM

J.Frankel

THE CHARGE OF THE COURT

That brings us to the ultimate and critical stage of this proceeding, for which, as one or more counsel have reminded you, all the effort has been expended, that is, the time when this case will be given you this afternoon for your solemn responsibility of seeking a verdict based on the evidence you have heard and on the law that the trial judge is required at this stage to give you in this charge to the jury, and that responsibility is, as I say, the trial judge's, and it's a relatively narrow and confined responsibility.

It is my job to give you the laws as it comes to all of us from the people who have the authority to make it, from the Congress and from the interpretations and rulings of higher courts.

(continued on next page)

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It is your job to take it as it is given to you and follow it faithfully as it is spread on the record. If I make a mistake in giving it to you, the mistake will be visible. If you were to make a mistake of faithlessness to your trust by not following the law, then that would be a secret error that nobody would ever know. So the system works because we expect and by and large we believe the expectation is fulfilled, that juries will take the law as it is conveyed to them and apply it in all good faith to the evidence or lack of evidence that has been placed before them.

Your critical task, the task as I told you when you were impaneled as jurors in this case, is to decide the matters for which we have trials -- the matters of fact placed in dispute in the case before you. You are, and we always say in these instructions and we say it because we mean it, the sovereign judges of the facts.

It is your recollection of the evidence that will control and if necessary your recollection may be aided by refreshment if you need it. It is for you to decide in your sovereign judgment what inferences you draw or fail to draw from the evidence in the record before you. You base your judgment as we all keep saying upon the evidence or the absence of evidence.

You will remember what evidence is. It is the sworn testimony and the exhibits that have been allowed to come into the record of this case. Those materials are supplemented as you know by some stipulations, about some agreed or undisputed facts as to what certain people would testify if they were here, and other matters of that nature and you may, of course, take those stipulated things as part of the basis on which you will seek and reach your judgment.

You will remember that what the lawyers and I have said and may say are meant to have a function in the case but they are not evidence. The evidence is the things that I have told you about.

b2 You will remember that the indictment is not evidence. It is a document which contains the accusations against the defendants, tells them what they must meet against the formulation of the issues to be tried, but it is not evidence of anything. In a little while and in fact if he hasn't done it surreptitiously before now I will ask the clerk to distribute some copies of this indictment to you, reminding you that it is a paper, that it is not evidence, but giving it to you for your convenience and mine to help you a little bit in following the instructions and to perhaps help you later on in the jury

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room when you retire.

It is just a retyped version and several carbon copies of the retyping of the indictment in this case and I will refer to it in a little while. Let me mention I have been informed by those who had charge of the typing that at the end of it the name of the current United States Attorney, Mr. Fiske appears perhaps because of some typist's reflexes. Actually at the time the indictment was returned the United States Attorney was Mr. Thomas J. Cahill. I think whatever else we might about, we can all agree that the difference in names is not a matter of consequence to you but the kind of morbid concern of legal people for inconsequential detail that leads me to draw that typographical error to your attention.

Now, in respect to that indictment the defendants before you entered pleas of not guilty and that meant as of then that the burden was placed upon the prosecution to prove guilt beyond a reasonable doubt before any of these defendants here on trial may lawfully be convicted.

That is a burden that has rested on the government throughout. It is a burden, as the lawyers say, that never shifts. Whether it has been met, discharged, is not necessarily a matter of the number of witnesses or evidence in a physical sense. It is a question of your considering

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the quality and cogency and ultimate overall significance to you of that record of evidence studied and taken as a whole.

It is a corollary of the government's burden of proof beyond a reasonable doubt that a defendant in a criminal case with us does not have to prove his innocence. A defendant, as a basic principle that we have repeated at such times as this, is presumed to be innocent. That presumption exists throughout in favor of any defendant in any criminal case in our system.

It is a presumption that will be with these defendants when you retire later on to begin your deliberations in the jury room. The presumption of innocence is sufficient in itself to require that you acquit unless and until you are convinced of guilt beyond a reasonable doubt.

As a further corollary of the things I have been saying, since the defendant has no burden of proof, it is for a defendant to decide whether he will or will not take the witness stand himself. The right not to take the stand is a right protected by the Constitution and a right co-joined with that is the right that nobody, no juror, no finder of fact, will draw any adverse inference frm the defendant's decision not to testify.

So I instruct you that you must not draw any inference based on the fact that these defendants have decided not to take the witness stand. That fact is sufficiently disposed of I think if I tell you as I do that it should play no part in your deliberations whatsoever.

Now, you have heard here and before your presence here many times about the standard of proof in a criminal case with us, the requirement of proof beyond a reasonable doubt. It is a central item and therefore a regular and central and standard item included in instructions to juries in criminal cases.

When we speak of a reasonable doubt in this setting we mean to begin with what the words undertake to convey. We mean a doubt based on reason, a doubt that is substantial, not merely shadowy or conjectural. A reasonable doubt is one that has its origin in your collective judgment and wisdom and sense and experience, as applied through the record of evidence or to the lack of evidence in the case before you.

It is not as somebody predicted I will tell you, an excuse to avoid the performance of an unpleasant duty. It is not a pretext for extending sympathy to a defendant or to anyone.

A reasonable doubt is the kind of doubt that

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would cause a prudent person to hesitate before taking action in some matter of consequence to himself or herself. Saying that in more words, if you in your own life are faced with a serious decision and if you proceed then coolly and objectively to review in your own mind all the factors that may have a rational bearing on that decision and at the end of that process you find yourself beset by uncertainty and unsure of your judgment, you have a reasonable doubt.

The converse of that is likewise true, if you have such a decision to make and you proceed to the kind of objective and rational review of the pertinent things that I tried to describe, and, if at the end of that you have no such uncertainty and no such reservation about your judgment, then you don't have a reasonable doubt.

Proof beyond a reasonable doubt does not mean proof beyond any doubt or proof to an absolute or mathematical certainty. If it meant that then nobody could ever be convicted in any criminal trial.

As I have told you, the point and purpose of a criminal trial is to try issues about matters of fact and it is in the nature of such issues, especially issues about things whose occurrence lies in the past, that they can't be proved one way or the other to an absolute or

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mathematical certainty.

So in criminal cases as in civil cases, as commonly in life generally, we rely on probabilities, not certainties. The point of these words about the meaning of reasonable doubt in the end is to underscore for you that in a criminal case the burden of proof on the prosecution is a very high one. The probabilities, that presumption, is a very high one and you may convict only if in the end your minds are free of the kinds of reservations and uncertainties I have undertaken to describe.

Now, with those fundamental principles before you, let us move toward, if not instantly to, the indictment and the issues that will be presented for you to consider in the jury room. First as background let me mention to you that this indictment, like all indictments in the federal court, rests upon federal statutes, enactments by the Congress, enactments which create federal criminal law. There aren't any judge made crimes in our federal system or indeed in any of our states any more.

Among the enactments in the United States Code of laws are some provisions making it a crime to distribute or to possess with intent to distribute certain so-called narcotic controlled substance and I use those words because you will see them in the indictment and they ought not to

be mysterious to you when you come to them.

I will tell you heroin is one such substance. The federal statutes, therefore, make it a crime to distribute or possess with intent to distribute the substance called heroin.

The statutes also make it a crime to conspire to do those things. The meaning of possession is clear enough for our purposes. It doesn't need any definition.

The meaning of distribute in this setting is simply to sell or transfer. So with those meanings, it is a crime to sell or transfer heroin or to possess it with intent to sell it or transfer it and it is a crime to conspire to do those things.

That is what is charged, the latter kind of crime is charged in this case, a conspiracy to distribute or possess with intent to distribute quantities of heroin.

As I said, I have given you the indictment because it will save my reading it and may be useful to you in the jury room as you are reviewing the issues you have to decide. I gather there is not a copy for each of you but if you look at it without wasting a lot of time reading it, I will just tell you very briefly about it.

You see at the beginning the United States is the prosecution and it is against a while list of defendants.

You know that the six defendants on trial before you are among those named in that indictment. You know that others are not here and I want to tell you now the best thing about those others is to forget them in the sense of forgetting how you would decide the question of their guilt or innocence if they were here.

It won't help you to speculate why they are not here and it won't help the defendants, it won't help the prosecution and it won't help you to do your job fairly and justly.

What you must focus on and it is responsibility enough is each of the individual defendants before you and decide whether any or all of them have been proved guilty beyond a reasonable doubt.

Paragraph 1 charges that from on or about January 1, 1975, and until the date of the indictment, and there is that whole list of defendants and others, and it goes over to the next page and says that they unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate those certain sections of the United States Code. That is, that they were in a conspiracy to sell or transfer or possess heroin with the intention to sell and transfer it and that is what Paragraph 2 says in its own words.

It was part or an object of that conspiracy that they would unlawfully, intentionally and knowingly distribute and possess with intent to distribute heroin. All those words for our purposes mean heroin.

Then the rest of the indictment before you begins with a heading called overt acts and lists some 37 of those and I will tell you about them as we go along.

One more introductory thought that I trust will be of some use to you. I will be telling you soon again that a conspiracy is a combination or understanding or agreement among two or more people to violate some criminal law. I would want for your guidance though I know it is absolutely indispensable to put it to you very briefly, the distinction between the crime of conspiracy and the so-called substantive offense which may be the object or aim or purpose of the conspiracy.

Let us consider robbery since that is an example that, as far as I know, has nothing to do with this case. You have the crime of robbery and you also have as a separate crime, the crime of conspiracy to commit robbery. It is separate.

So if two or more people get together, make an agreement that they will rob a bank, and if then knowing what they are doing and acting intentionally and so on, they

take one or more steps toward the carrying out of that robbery, they may at that point have accomplished the crime of conspiracy, even though they never get around to robbing the bank.

Now, in that setting, the agreement or understanding plus a step or more in the direction of accomplishing it is a separate crime of conspiracy. The robbery of the bank is the substantive offense and it would be a separate additional offense in itself.

As you would know on a subject so ancient in our law there are lots of literature, some of it passionate one way or another about the subject of the crime of conspiracy as it exists in various contexts.

You sometimes hear in instructions to juries that conspiracy is a more dangerous crime than other crimes because it involves combinations of people agreeing to violate the law.

On the other side you sometimes hear that a conspiracy is a danger to the citizens or to prospective defendants because it casts a net in which people who are innocent may be caught on account of the nature of the doctrines that fill out this notion of conspiracy.

I will instruct you that that kind of legal nicety either way is not much to any of us here in this trial.

When I tell you what the law is, and you heard the evidence, it is not for you to make judgment whether we like or don't like the doctrine. The crimes are against the law but your job is difficult enough and you will have to decide whether under the law as I must give it to you the prosecution has sustained its burden of proof as to any one or more of the defendants here on trial.

Now, for your understanding and for the sake of analyzing your problem -- we have a standard way of stating the concerns of the jury -- I will tell you that in order to establish guilt on this charge of conspiracy, the government is required to have proved beyond a reasonable doubt each and every one of three essential elements.

Each and every one means what it says, that is, if any one of these essential elements is not proved you must acquit, and I will state and then elaborate on these three essential elements in this case.

First, the government must have shown that at some time between January 1, 1975 and the date of the filing of the indictment in this case, which was December 4, 1975, there was a conspiracy of the kind the government alleges, namely, a conspiracy for the illegal possession and distribution or sale of heroin.

Now, the date of the filing of the indictment, as I will soon tell you, is not of great consequence, and I don't want to confuse you on another subject. For reasons that are of no interest whatever here now, this is a so-called superseding indictment. It supersedes an earlier indictment that was filed in November. So if that discrepancy in dates upsets you or throws you off, ignore it. I am just telling it to you because it

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suddenly comes to mind that somebody might get concerned about it. I now tell you it is not a concern.

There was an indictment filed in November. This one superseded it.

First, then, the government must show the existence for some portion of the period I have mentioned of the kind of conspiracy it charges in this case, a conspiracy aimed at the illegal possession or the distribution or sale of heroin.

Second, the government must establish that the defendants here on trial or any particular defendant you are considering at the particular time knowingly and intentionally participated in that conspiracy, became a member of that conspiracy, as we frequently describe it for shorthand.

The third essential element is the requirement of proof that some one of the conspirators, whether one of these six or any other, at some time during the existence of the conspiracy committed one of those 37 overt acts that I mentioned to you and we will talk about again for the purpose of furthering or carrying forward that conspiracy.

Now, let me go back and, as I say, expand a little, explain a little about the meaning of those

essential elements and what you must look for in deciding the case before you.

First I said the government must prove the existence of the kind of conspiracy the indictment charges.

I have already told you that a conspiracy is a combination or agreement or understanding in which two or more people undertake by acting together to violate some provision of the criminal law.

It is that unlawful combination or agreement, as I told you before in talking about the hypothetical of robbery, it is that combination or agreement that is the gist of this offense.

Now, it is sometimes said that conspirators are in a kind of partnership in crime and that in some ways they act as agents for each other in the conspiratorial venture.

You must not be thrown off, and I take it you won't be thrown off whether I said what I am about to say or not, by the use of words like "combination," "agreement," "partnership," "agency," words that have their reference in lawful kinds of affairs.

You understand that when the subject is an alleged conspiratorial agreement, these words are used somewhat differently than they are in connection with

lawful commercial or other transactions.

As a matter of common sense you will understand then that if people enter into a criminal conspiracy which is likely to be informal and left to unexpressed tacit understandings, the arrangements in a criminal conspiracy may seem loose and relatively casual in their appearance. They may not look like business agreements or other lawful agreements.

At the same time, having said that to you, I also instruct you that in order for a criminal conspiracy to have existed there must have been a clear and certain understanding betweer and among the people in question that they would work together in whatever the illegal enterprise may have been.

You look then not simply to words or formalities, but also to conduct, to acts, to relationships, and judge the whole picture of circumstances in deciding whether a conspiracy has been shown to have existed.

Now, a criminal conspiracy, like other kinds of combinations, may have different members at different times. People may join in it, stay in it for only part of its life, and drop out. They may or may not be replaced by other people.

You may take into account the quality of

informality in considering the circumstances of this case.

But in the end, again, I emphasize that in order to find the kind of conspiracy this indictment charges, you must find, you must be satisfied that there was such an agreement clearly in existence for some portion of the period which the indictment alleges in that first paragraph.

Now, I have told you in talking about the irrelevancy of robbery that a conspiracy may exist even though its objective, the substantive offense, was never carried out, never committed.

At the same time, evidence that the substantive offense or offenses were committed may be taken in the case viewed as a whole as some evidence that the conspiracy to commit such offenses did exist.

As I have said, your job here will be to take all of the circumstances that the evidence discloses to you, reconstruct the events in question, reconstruct the behavior of the various people alleged to have been involved, and decide from all those circumstances whether or not the proof satisfies you beyond a reasonable dobut that a conspiracy of thekind alleged, a conspiracy to deal in heroin, existed during the period in question.

As to the period, if you are satisfied that the conspiracy has been proved, its exact duration is not in

itself a critical matter.

Again I tell you the indictment in kind of standard legalese alleges a beginning date, January 1, 1975, and it ends with the date of the filing of this superseding indictment in December of 1975.

The government is not required to prove that the conspiracy endured for the whole of that period. What I instruct you on this is simply that if the government has proved the conspiracy and that it was in existence for any portion of that period, then its burden on this first element may be found to have been satisfied.

Now, if proceeding logically, at least, if you are not satisfied that that first element is shown, if you are not satisfied there was a conspiracy of the kind charged, then your task is ended and you must acquit all the defendants.

On the other hand, if you are satisfied of that first essential element, then you would turn, again, speaking logically, whether you deliberate logically or not, you would turn to the question of the second essential element, whether one or more of these defendants has been proved to have been a participant or a member of that conspiracy.

Now, that question of membership must be

considered and decided by you with careful and specific attention to each separate defendant on trial here before you.

I emphasize in this connection that in our system in general guilt or innocence is an individual matter. We don't follow doctrines of guilt by association in the law of conspiracy or elsewhere.

So the case against each of these defendants in the end will stand or fall on the basis of the evidence or lack of evidence touching that defendant.

And so how will you go at this question of membership? You will consider this issue for each defendant by considering the evidence as to his own words, his own conduct, his statements and his connections with the conduct and words, behavior of other people you find to have been involved in the events to which your attention has been directed.

Now when I speak to you of the connections with other people, and I use that word in its general and not in its more specific narcotics sense, you will understand if you think about it for a minute that I am talking about a kind of commonsensical approach to the appraisal of facts in light of outside the court and in the courthouse. That is to say, you will understand that the statements and

the behavior of any of us in any setting may take on particular meaning and significance only when it is viewed in its setting and that that setting may and commonly does include the statements and the conduct of other people.

It would be absolutely trivial if somebody says, "Thank you." Its meaning and its import have to relate to something that went before. And so it goes in the criminal law, in the civil law, and elsewhere.

Therefore, I told you and I am stressing to you two things: In the end to decide whether anybody was a member of a conspiracy you must focus upon him. What did he do? What did he say? How did he behave? What did it mean?

I am also saying that in this as in other settings the answers to those questions may depend in part on what other people did and what they said and how they behaved, all in relation to each other.

And so you will consider the behavior of each of these defendants in connection with the behavior of other people, other defendants, or other people not here defendants, to the extent that any such connections are established for you by the evidence and shown by the evidence to your satisfaction to be meaningful, and then you put all the evidence together and decide what each separate

individual defendant did and said during the times in question to decide ultimately this key second element: Did he participate in the conspiracy?

Now there are some more general doctrines that you must understand. To find that anybody is in a conspiracy you must find that he knew the unlawful purpose of the combination or agreement and knowingly associated himself with that purpose.

To show that somebody became a member of a conspiracy, the prosecution must show that the person entered into it, however informally, knowing its nature and meaning to be a participant, meaning by his own conduct to help carry out the purpose or a portion of the purposes of that illegal enterprise.

Now, you will understand in this same connection, and I have said this, but I repeat it, that mere association with one or more people who may be in a conspiracy or may be committing a crime doesn't make you a conspirator.

Even close and intimate associations with such a person doesn't in itself make you a member of a conspiracy. Knowledge of the conspiratorial enterprise or undertaking by itself is also insufficient.

What you must have is both things: knowledge and participation. To be a member of a conspiracy you

must have known what it was about and intended to associate yourself with the scheme or plan or undertaking, intending to act yourself in some way as to further the venture and further some substantial part of it.

Now let me, after all those lawyers' abstractions, try to be a little bit more specific and concrete about the nature of the conspiracy alleged here and what that means to you in your determination whether one or more of these defendants has been shown to have been a participant or a member.

You know surely by now that the overall conspiracy in which that substantial roster of defendants is named is alleged by the government to have been a large-scale enterprise, taking it more or less chronologically, an enterprise that begins for our purpose with large-scale purchases of evidently Mexican heroin from suppliers in California, the transportation of those large quantities of heroin to New York City, and then its sale here, and we will stick more or less to the period that directly concerns us, its sale here by or allegedly on behalf sometimes of Raymond Rossy to his buyers in New York who purchased more or less as retailers and then for the purpose of sale ultimately to the ultimate consumer or user.

Now, I have told you or if I have not let, let

me say now that a conspiracy, like other kinds of enterprises or undertakings, may have different aspects or parts or divisions, and conspirators may perform varying roles, as is again true of other kinds of enterprises.

In this case, beginning with the long roster of defendants, but turning quickly to the group of six who are in this case, you know that the government alleges that Mr. Rossy had buyers here in New York City and the conspiracy charge is a conspiracy that has those buyers as part of the overall enterprise, serving at this end to more or less complete the illegal flow of heroin from the suppliers in California to or toward the ultimate users in New York City, and you know that the government charges that the several defendants actually had and performed a variety of different roles in this alleged conspiracy.

It is alleged that some assisted Rossy in transporting and making his sales of the heroin, that others purchased from Rossy, serving at that end of the chain of transactions, and it is alleged, as you know, that some who are here on trial both assisted him in his selling operations and at the same or different times functioned as purchasers from him.

I don't intend by any means to duplicate the full summations you have heard on both sides and I don't

intend to give you anything like a summary of the evidence.

What I do want to do in very brief compass is mention to you the alleged varying roles of these six defendants so that you will understand what you must consider indeciding whether the government has proved its case, and specifically on the element we are considering at this moment, whether the element of membership or participation in the conspiracy has been made out as against one or more defendants.

Now, as a kind of neutral form of presentation I am going to take the defendants for this purpose in the order in which their names appear in the indictment and remind you, though I am sure you have it more or less in mind, of what the government claims or charges or alleges the evidence has shown about their several roles in the alleged conspiracy.

Beginning with the defendant Jose Perez Lopez, the government charges that he, after selling heroin for a time to Rossy or assisting in selling it to him, gave Rossy the so-called California connection and thereafter functioned as a colleague and courier for a period of time with Rossy and with others associated with Rossy in the trips to and from California for the purchases of heroin there.

As to Miguel Valles, who is named next, the government charges that he was during the period in question a major buyer from Raymond Rossy and in addition charges that at least once he made a trip to California with Rossy to participate with him in the purchase of heroin from the California connection.

Going on, according to the government's contentions, Tomas Valles was first a purchaser from Raymond Rossy, then an assistant to Rossy in storing and selling, that is, delivering and collecting for the heroin in large quantities to buyers who it appears to be claimed were themselves engaged in resales of one kind or another.

It's alleged that Tomas Valles made deliveries, collected payments, kept records, and for at least a portion of the period involved in the indictment, stored Rossy's money and heroin in his dwelling place.

Named next on the list is Enrique Valles, who is also allegedly known as Gordito, and he is charged with having assisted in various ways, essentially as a subordinate person. He is charged withhaving been a subordinate to Raymond Rossy in a trip to California which Enrique Valles is alleged to have made with his brother Mona, a trip for the purchase of heroin from the California suppliers.

It is also charged that he performed subordinate roles in carrying heroin from Rossy's apartment to that of Tomas Valles and from time to time functioning as an assistant to his brother Miguel when Miguel came to make purchases from Rossy.

The defendants Luis Garcia and Julio Marcelino are accused mainly of being purchasers of heroin in substantial quantities for resale from Raymond Rossy.

Marcelino is accused of having been for a time a p rtner of Raymond Valentine and then a Rossy customer and reseller on his own.

Garcia is charged mainly with having been a customer. There is some claim that having an overall view of Rossy's enterprise, Garcia expressed hope of possibly inheriting it.

It is charged then as to Marcelino and Garcia, the last two I have mentioned, that they functioned as did other major purchasers from Rossy, that is, they were in the branch of the enterprise at the New York end distributing as resellers here, knowing and believing, according to the government's charges, that they were,among others,customers of Raymond Rossy and that they thus served with his other customers as this more or less ultimate end-of-the-chain distribution on which the flow of illegal heroin from

California to here ultimately depended.

Now, I talk about them as purchasers as a prelude to making this point to you that you must keep in mind: You must understand that an isolated purchase from an operator like Rossy would not, without more, make the buyer a member of the conspiracy. And so if you are looking at the question of membership, as you will be, for a defendant, and you find that that defendant was a buyer from Rossy, you must also determine whether that defendant had knowledge of a Rossy enterprise larger than his own isolated transaction and whether that buyer had an understanding at least in general terms of how his purchases would tie in with Rossy's overall enterprise.

Now still talking about the buying kind of charge, I will tell you that in this connection it is not necessary to find that a particular defendant you are considering knew everyone in this alleged conspiracy or knew the details of the entire operation or knew the exact source or even the exact location of the source.

What I am saying is that to find a defendant in the capacity of buyer, to have been a member of this heroin conspiracy, you must find that that defendant had at least a sense of the scale of the alleged conspiracy.

To be a member of this conspiracy, a buyer must

have had an awareness of the larger dimensions of Rossy's activities, the fact that Rossy was an intermediate between larger suppliers and them, the fact that he had other buyers, and that it was the existence of his group of buyers that made it possible for him to be moving quantities of heroin.

There must have been this kind of awareness, I say, in order to make a person as a buyer a member.

I also tell you that the buyer-member need not be shown to have known all these other individuals, the buyers or the suppliers or others, but merely to have had a sense, an understanding of their existence and their place in the nature of this kind of illegal enterprise.

Now, in considering whether there was such an awareness in the case of anybody, if you find that any of these were purchasers, take into account all the circumstances which shed light on this kind of question, and I will tell you, not exhaustively, but you may consider in this connection, among other things, the size of these purchases, if you find purchases to have been made, the amounts of money involved, the frequency or regularity of those transactions.

You may also consider the connections or relations, if any, between one buyer and another, evidence of partnerships, evidence of introductions by one buyer or

another, or other evidence showing an awareness in the case of any given defendant buyer that Rossy had other customers and that Rossy had sources for the substantial quantities of heroin in which it appears to be agreed that he was dealing.

So to summarize this, in general, as to any of the defendants here on trial, you may not find that any was a member of the illegal enterprise unless you are convinced beyond a reasonable doubt that he was aware of the nature of that illegal enterprise in general and that he knowingly meant to associate himself with that venture.

If you find this combination of knowledge and participation, as I have kept stressing it to you, even if the knowledge was not complete and even if the participation was only partial or subordinate, you may find that the defendant in question has been shown to have been a member of the conspiracy.

And when I read it to you and when you glance at it again, if you do, you will notice that the defendants are charged in this indictment with having functioned knowingly and intentionally when they are alleged to have conspired with each other.

Now, those words "knowingly" and "intentionally," capsulizes, refer to the question of criminal intent that

has to be shown before anybody could be convicted of a crime of this kind.

I think I have already, and perhaps at some considerable length, essentially made the point to you that you can't become a member of a conspiracy, nobody could be a member of this conspiracy, without knowing what it was about, without acting intentionally, without knowing that the understanding, the arrangement,w as to deal illegally in heroin, and that the understanding included the kind of general scope and character of the enterprise that I have just been talking about.

Now, although I think it has been covered, it is, as I say, a key element, and I want to add to what I hope were reasonably specific things I said to you a couple of the simple but basic general propositions about the subject of knowledge and intent.

I will say to you very simply,and it is simple, though the matter is essential, that in this context in order to be shown to have acted knowingly and intentionally a defendant must be proved to have acted deliberately and purposely, not as a result of mistake or accident or neglect or inadvertence, not as a result of ignorance of what he was doing or what he was involved with.

A defendant must have acted with the specific

intent to engage in illegal narcotics transactions.

He doesn't have to have known the section numbers alleged in this indictment, and none of us can remember them anyhow, but he must be shown to have been acting with a bad or evil purpose in the sense that he knew dealings in substances of this nature are and were forbidden by the criminal law.

Now, knowledge, intention,are qualities of mind. They go to the state of somebody's thought. They are facts, as is digestion or hunger, facts that we are able to perceive in one way or another. They are facts, however, that normally, commonly we don't get at by so-called direct evidence. Somebody may tell you what he believes or thinks or knows, and that is direct evidence, as lawyers call it, of what the person believes or thinks or knows.

T7 But commonly in lawsuits and in other kinds of serious affairs we are accustomed to getting at knowledge and intent and motive by so-called circumstantial evidence. So here you will take all the circumstances as they have been laid before you, what you have learned about the people involved, what they did, how they behaved, what they said or didn't say and you will, in the end, fit all these circumstances together in determining whether the government has established beyond a reasonable doubt that any one or more of these defendants knowingly and intentionally participated in this alleged conspiracy.

I told you if you find there was a conspiracy, and find one or more of the defendants were members, you may not convict anybody unless you also find that at least one of the overt acts alleged in the indictment was committed during the conspiracy and in furtherance of it and an act in that list was committed by one of these defendants or any other is sufficient. That is necessary for this element of the case.

The theory, and I don't know how interested you are in the theory at this hour of a relatively long day, but at least let me say a word. The theory of that requirement is this: It is thought generally that people might get together and talk about doing some illegal thing and

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then not take one single step to carry out the illegal enterprise. It is thought generally that we ought not to make mere talk a crime so we add in most conspiracy cases and in this one, the only one you care about, the essential element of proof of at least one overt act.

Now, there are I said and I think it is correct, 37 of them listed in this indictment and they are facts alleged to have been committed by a variety of people. Some of them are acts which would be illegal in themselves. Some, like having a telephone conversation, are acts not illegal in themselves, seemingly harmless on their face.

I tell you that an overt act satisfying this requirement of proof need not be an act that is itself illegal. It may be any one of those 37 and it need not have been done by any of these six defendants. It could have been done by any participant in the conspiracy provided it was done in furtherance, with the purpose of furthering that conspiracy.

But I also tell you at least one of those must be proved beyond a reasonable doubt or you could not convict any of the defendants on trial before you.

These instructions are meant to convey the subjects, the issues, for your consideration on the merits of this prosecution; the issues that you will have to

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consider in deciding whether any defendant has been proved guilty. I want to proceed now to some of the other general propositions, about the content, the nature and the requirements that govern or are involved with your deliberations. I want to say because it is required and it is customary to say a few words about a subject that obviously will engage you and probably has already engaged you, the subject of credibility.

You have heard a lot of summations and without clocking them, devoted not surprisingly in very considerable measure to questions of credibility. It is a standard subject as I say in legal argumentation and jury deliberations. It is not, however, a legal specialty though we instruct on it it is a premise of our system at least that people trained in the law have no special expertise in answering questions of credibility.

So we bring to the courthouse people like yourselves who are lay persons normally as far as the law is concerned and we lay such critical, vital questions before you. We give them to you in the belief and expectation and this experience pretty much indicates that you will bring to the resolution of these credibility questions, the kind of collective sense and sanity and awareness and experience and wisdom that you bring generally in your own matters of

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seriousness to the decision of questions about how far you may rely on particular people and for what you may rely upon them in the accounts they give you of events that are important to you for one reason or another.

So here, having seen and heard and paid attention as you did to these witnesses, you will be asking certain obvious questions of yourselves and each other. How did the witness strike you on the witness stand? Did he or she appear to be candid or truthful, forthright, or evasive or shifty, suspicious?

Did the witness appear to know what he or she was talking about and did the witness seem to intend to convey to you accurately the content of his or her knowledge? Were there contradictions in the testimony? How does it square with the other evidence in the case, both the testimony of other witnesses, the exhibits, the other circumstances and relationships as you have been given to understand they existed?

You have heard false testimony of uncertain dimensions and you have to take this very soberly into account. If a witness has testified falsely to you, you will want to consider what was the falsity about, was it about a question central to your concerns? Was it peripheral or somewhat in between? Was the falsehood direct or accidental?

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Was it explainable on the grounds of other than evil motive or meant simply to delude and deceive you and us in efforts to reach a true account of the facts and a just result in this particular case?

If you find that any witness has deliberately testified falsely before you on any issue that is material in this case, it is part of your sovereign prerogative that I mentioned, and I will emphasize, to decide whether you will reject all of that witness' testimony, or you may credit the parts of it, if any, that you find believable, sensible, plausible and helpful to you in arriving at the truth about the matters that are in dispute before you.

When you consider the witnesses, you will consider as you have been urged to do on both sides, their motive and what interest they may have had in the outcome of this case.

If a witness had reason to testify falsely, what kind of thing or things did he or she have reason to testify falsely about? And what kind of things as a consequence of that are you disposed to believe or disbelieve, if you believe any testimony of any of these particular witnesses as they came before you.

b2 In considering credibility you may consider evidence as it has been shown in the case in several

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instances that the particular witness has in the past been convicted of serious crimes. Such evidence is placed before you on the ground that you may find as jurors that somebody with prior criminal convictions is for this reason less believable than somebody else. You may consider that evidence of prior convictions as I say for that purpose.

In considering questions of interest or motive, the question of such factors arises as you have heard in the case of so-called accomplice testimony. You have heard three witnesses here, Raymond Rossy, Benito Cruz and Raymond Valentine that explicitly and unequivocally present themselves to you as accomplices in the alleged conspiracy with which the defendants before you are charged.

In addition, you have heard Raymond Rossy's wife Nilsa and whatever the legal situation is, she may be considered essentially in the same light as an interested participant in the events around which this case centers, and somebody with respect to whom the general principles touching so-called accomplice testimony might just as well be considered. So you may apply the thoughts I am giving you now to all four of these witnesses.

Your experience will tell you whether it is argument or given to you in instructions or not, that the

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government as prosecutor frequently deems itself compelled to rely on the testimony of accomplices or participants, people who themselves have criminal records, in its efforts to prove criminal activity by other people.

The government contends, as it is permitted to do, that it must take the witnesses as it finds them and that this is a thought particularly applicable in cases of conspiracy or other crimes involving groups of people. It is argued that often only the people who themselves participate have the knowledge required to show criminal behavior by others.

So in that setting it is the law that there is no prohibition against the use of accomplice testimony. Indeed, it is the law in the federal courts as the government says here that the testimony of accomplices may be enough in itself for conviction if that testimony is found by a jury or other trier of the fact to be sufficient to show guilt beyond a reasonable doubt.

You have to be instructed, at the same time, that accomplice testimony is of such a nature that it must be scrutinized with particular care and viewed with particular caution in making the decision whether that testimony is credible.

You have heard the factors argued. I will remind

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you not necessarily of all but of some of the things that you will want to review in your deliberations together on this subject.

You want to take into account what interests of these several witnesses or any of them would be served by their lying and what interests would be served, if any, by their telling the truth about the criminal things that they said they were acquainted with.

Was the testimony of any of these witnesses fabrication on the central issues before you induced by a belief or hope that this witness would somehow receive favorable consideration concerning his or her difficulties or possible difficulties with the law based on that fabrication?

Or did the witness concerned with self-interest or conscience or whatever decide that he would or she would be best served by taking the witness stand and telling the truth about the matters affecting the defendants here on trial?

Did the witness have an understanding or belief however generated that the best course for that witness sitting on that witness stand would be falsely to implicate one or more of the defendants here on trial?

Or did the witness come here for the motive of

personal advantage or any other motives and mean to tell truthfully the stories that you heard from this witness stand about the defendants here on trial?

Those are just shorthand reminders of questions argued to you at much greater length. You will clearly want to pay attention to all of those arguments and these instructions and then I think it is fair to add in the end, with accomplices as with other witneses, you will want to take the entire picture into account, all the evidence in the setting that that witness, in that kind of picture of the evidence or gaps in the evidence, in deciding to what extent you should or may or will give credence to the accounts given to you by one or more of the witnesses I have said should be deemed covered by these thoughts about accomplices.

Now, approaching you may not be sorry to learn the end of these instructions, let me just remind you of a couple of things mechanical and to keep with you when you are together. When you do retire there will be 12 of you. That means that the expectation is that you will reason together and that means, of course, that each of you will feel not only privileged but an obligation to contribute your own sense, your own wisdom, to these deliberations.

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In order that it may work, you will, by the same token, go to the jury room ready to listen attentively and patiently to the thoughts of your fellow jurors.

If you have an idea about any aspect of the case and, in the course of a rational discussion you are led to realize that it was wrong, you won't hesitate to change that idea.

On the other hand, if you have an idea that you hold rationally in good conscience, you won't feel obliged or even permitted to foresake it merely because you happen at some particular point or other to be in a minority in the voting.

If, when you are deliberating, you need to hear any of the testimony again, send us a note through your forelady and we will undertake together to find what you need and supply it to you. I guess I should add that it is not desirable that you sit down in the jury room and immediately start writing notes out to us.

The first effort ought certainly to be to try to reconstruct these things and recollect them together but in the end when you have crystallized the issues or where you disagree with what so and so said or didn't say, do send us a note and we will be on hand to find what you are asking for and supply it to you.

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The same holds true of exhibits. If you want any, tell us about that and we will send them to you.

If you need to hear any of these instructions again, the same rule applies. There are, as I have stressed b3 6 to you, six separate defendants here on trial, six separate individual people for you to consider. Your verdict will consist of six separate determinations if and when you reach them and the procedure in our court is to have the verdict delivered orally in open court so, Miss Morris, when the time comes we will ask you to perform that function.

If at any time you have reached a verdict on any of the defendants but not all and you wish to tell us about that kind of partial verdict, you may do so and we will receive it.

If during your deliberations you are sending out a note and are divided at that time, don't tell us how the vote stands. That is a private matter for the jury and one on which we are not to intrude or in which we are not to be involved.

Because there are so many lawyers at this time we must have advice of counsel to see whether there are other or different things they want me to tell you and I think the best practical arrangement is to give you what we view as a short recess and the last recess before you

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are deliberating and then we will call you back. Why don't you take a few minutes?

(Jury left the courtroom.)

THE COURT: Are there any exceptions?

MR. THAU: Yes, your Honor.

Your Honor, as a prelude to your instruction in connection with the Bertelotte and Sperling charge with reference to a buyer, your Honor selected as two buyers Luis Garcia and Julio Marcelino and, in doing so, your Honor employed the following language and I think I have it just about verbatim.

"Luis Garcia and Julio Marcelino are accused of being buyers of substantial quantities of heroin."

Shortly thereafter your Honor said that Garcia and Marcelino were other major purchasers.

Now, I certainly don't want to offend any other defendants here but I deem it my duty to my client to point out to your Honor that in this case there was a definite distinction concerning the importance of these two alleged buyers. I don't have the government's opening statement here, although I have a feeling that I remember that distinction was made.

I call your Honor's attention however to page 39 of the record, testimony by Ray Rossy, line 17 and it

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comes in the middle of the question but I don't think I am changing anything:

"Q Will you tell the ladies and gentlemen of the jury who your biggest customers were for heroin purchased in Los Angeles?

"A Georgie from Brooklyn, Luis Garcia and Miguel Valles."

Going on to page 40 after some identifications the question is asked:

"Q After Georgie from Brooklyn and Luis Garcia and Miguel Valles, who were your other customers?"

He lists four or five or six others among whom you find Julio Marcelino.

Why do I make such an issue of this? Because I think, your Honor gave a very excellent charge on what it took for a buyer to perhaps have a consciousness or sense of the entire enterprise or what it did not take and to have characterized the government position respecting Marcelino as one of the major buyers together with Luis Garcia I think is somewhat exaggerating the government's contention of his role.

Therefore, I ask unless the government disagrees with me and I would call upon the Court to ask the government whether they agree with me with respect to his relative

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importance and whether your Honor will perhaps tell the jury that the government intention is not as earlier stated.

THE COURT: I am not going to invite or sit by and listen to that dialogue. That portion of instructions on which I might say you made no requests, either you or from Mr. Blossner was meant to give your client the benefit of a thought that was first given to the Court by Mr. Hirshman.

I didn't say anything about their relative size as compared to Miguel and Tomas and the others. I said something about them in their role primarily as buyers and I don't think I said anything relative at all.

The government alleged they bought substantial amounts of heroin and if the government is now not considering quarter kilos or 8 or 9 or 10 ounces substantial, that is the government's problem.

In any event, I don't think there is any need to talk about relativity.These are meant to show that unlike other defendants, the key subject might be the peculiar problems the government has in locking them into this conspiracy and their role as buyers. The people like Tomas and Miguel, Lopez and even Gordito, the government problem is different and I don't think there is any problem. So I don't know exactly what your request is but if I know

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what it seems to be, it is denied.

MR. THAU: Your Honor, may I ask as follows if this is an item that the jury asks a rereading of that portion of that charge, at the very least would your Honor not bump Garcia and Marcelino together and again call them both alleged buyers of substantial quantities and major buyers? Perhaps the second time around we could have a deletion of these adjectives.

THE COURT: On this I ask the government, do you not claim they are major buyers?

MR. KAUFMAN: Your Honor, we do claim they are major buyers.

THE COURT: That is what I said, the government claims that they are major buyers.

Any other exceptions?

MR. THAU: That is it?

THE COURT: Anybody else?

MR. HIRSHMAN: I don't know if this is an exception b[illegible] I just invite the Court's attention, may we have a comment about the one witness we called, the defendants, Doris Cohen? In other words, you did comment on the accomplices, four witnesses, that the government called.

THE COURT: I don't know what you are talking about. I didn't see any trace of a request. Would you want Doris

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Cohen put in the accomplices?

MR. HIRSHMAN: No. All I am saying is since the Court seemed to have in some small way attempted to marshal a little bit of the evidence about who testified, that the government brought in four witnesses, I just thought it might look to them that the only people that were plainly to be looked to to make a decision were the accomplice witnesses.

THE COURT: Well, I can't help your thinking. Those were the witnesses on whom I had a request for accomplice testimony instruction and I gave it. I have given the accomplice testimony instruction for too long now without having to talk about other witnesses. I don't know what your point is and it is overruled.

Who else?

(No response)

THE COURT: Well, in that case let us have the jury in and we will excuse the alternates and talk about our schedule after they leave.

(Jury present)

THE COURT: Ladies and gentlemen, I think the consensus is that you have heard enough oratory and instructing for one day and that we won't burden you any further.

(Alternates excused)

b4 THE COURT: I think one of the attorneys mentioned to you, I think perhaps I didn't and I am supposed to, that in order to reach any verdict on any defendant, you must be unanimous, any verdict either way. I just mention that to you in case as I somehow suspect, I overlooked it.

Now, let me talk about the mechanics and let you retire. You and the rest of us have had a fairly long day. You understand you will be staying together until your deliberations are completed. I am going to propose this:

I am going to propose that you work together until 7:30 and then if, and as his very probable you are not finished, that you be taken to your hotel and have dinner and then I am telling you while I am proposing this I will let you by a majority vote overrule me if you wish.

It is our experience down here that if the jury suspends for dinner and then comes back, the dinner hour tends to run in the vicinity of two hours. The jurors come back less lively and keen than when they left and that leaves an hour or two before civilized courts must suspend for the day anyhow.

Having observed that going on for a lot of years, it seems to make more sense if you go along and don't disagree,

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to do it the way I just suggested, work until 7:30 and I think you will have used up the energies of at least some of you for the day and then, as I said, probably you could suspend and go to the hotel to have dinner and get a good night's sleep.

Is there anybody who has different ideas or other preferences that makes that unsuitable? I don't see any hands. I certainly don't see any large show of hands.

The other thing is I understand from Mr. Swansiger that there is some concern or interest about communicating with families and others. If you give the notes to the marshals about whom you want to call and what message you want given other than things like secrets and unlawful things, our marshals will assist you with that.

Our job here is to be on hand and respond to your notes. That is really our main and primary and substantially exclusive duty, to respond to notes and if there is a little delay in answering it, please understand that sometimes it takes some work to respond to notes and with this many lawyers it is not easy to draft a note for the milkman without a lot of consultation.

But even apart from that it may take time, understand

that we will be at your service as promptly as we can whenever you need us.

Now, if we may have the marshals sworn.

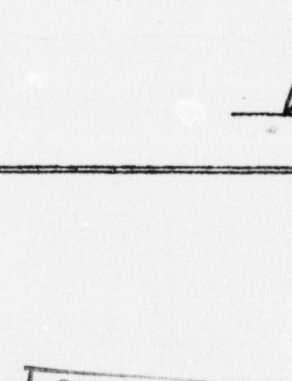
(Marshals sworn)

(Jury retired to deliberate at 4:50 P.M.)

CERTIFICATE OF SERVICE

Aug. 13, 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.



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